[APPELLATE CIVIL JURISDICTION.]

AITKEN, J.
November 1, 1937.

DASON vs. KIT HOP & ANOR.

CHIN SEN SAM vs. DASON & ORS.

REFERENCE TO JUDGE OF QUESTIONS OF LAW ARISING THEREIN, UNDER SECTION 571 OF THE CIVIL PROCEDURE CODE.

[IPOH CIVIL SUITS Nos. 932 of 1936 and 613 of 1937.]

Practice—judgment debt—payment by instalments—non-compliance with order for—application for committal— rescission of order—Court's jurisdiction—Civil Procedure Code, Section 345 (iii).

On the hearing of an application to commit a judgment debtor for failure to comply with an order for payment of the judgment debt by instalments, the Court, after hearing both parties, has power under Section 345 (iii) of the Civil Procedure Code, to vary or rescind the order or suspend its operation.

REFERENCE to the Judge under Section 571 of the Civil Procedure Code.

Cur. Ad. Vult.

AITKEN, J.—First as to the point of law arising in Ipoh Civil Suit No. 932/36 under Section 345(iii) of the Civil Procedure Code, which provides that a Court may from time to time vary an order for payment of a judgment debt by instalments, or suspend its operation, or rescind it. The learned Magistrate wishes to know whether he has power thereunder, at any time, irrespective of whether the matter is before the Court or not, to rescind such an order.

In my opinion a Magistrate must exercise his powers under Section 345(iii) of the Civil Procedure Code judicially, that is, he must give both the judgment creditor and the judgment debtor an opportunity of being heard in regard to any proposed variation, suspension, or recission and of calling evidence in support of their respective contentions, before he can properly come to a decision to vary, suspend or rescind.

In Ipoh Civil Suit No. 932/36, I gather that both the judgment creditor and the judgment debtor were before the Magistrate on an application by the former calling upon the latter to shew cause why he should not be committed to prison for failure to pay the judgment debt by instalments as he had been ordered to do. The learned Magistrate, apparently after hearing both parties, refused to commit the judgment debtor to prison for his failure to pay the instalments as ordered, and purported to rescind that order. Provided that he listened to everything the judgment creditor wished to urge against rescission and gave him an opportunity of adducing evidence on the point, did he desire to do so, I think that he acted within the power conferred on him by Section 345(iii) of the Civil Procedure Code in making such order of rescission.

Secondly as to the preliminary point taken by Mr. Thivy, in Ipoh Civil Suit No. 613/37, that this order of rescission, with which I have just been dealing, is null and void because no application for rescission was before the Court when it was made: In my opinion that point is not open to Mr. Thivy, since no steps have been taken to get that order set aside.

As has often been pointed out, so long as a Court has jurisdiction to decide a question, it has jurisdiction to decide it wrongly as well as rightly; and the only way to get rid of a wrong decision in such circumstances is to appeal against it. For this reason the Court which has got to decide Ipoh Civil Suit No. 613/37 cannot consider whether the rescission order made in Ipoh Civil Suit No. 932/36 was rightly or wrongly made; it must assume that it was rightly made and act accordingly.

Order accordingly.

[APPELLATE CIVIL JURISDICTION]

CUSSEN, J.

November 30, 1937.

SAK'AMAH BINTE SARIDIN alias SAK'AMAH BINTI HAJI ABU BAKAR .....Appellant.

vs.

TASMIN BIN ABDUL SAMAD ....Respondent.

[SELANGOR CIVIL APPEAL No. 23 of 1937]

Muhammadans—husband and wife—land registered in wife's name in trust for husband —agreement providing for transfer to husband in event of divorce of wife at her request—legality of—laches—limitation—jurisdiction.

The plaintiff claimed from the defendant the transfer to him of the land held by the defendant in trust for him or in the alternative $500.00 "on account of the value thereof." It was agreed between the parties, being husband and wife, that if the plaintiff (husband) divorced the defendant the property "was to be divided according to Hukum Shara'" but that if the defendant herself asked for divorce the land should be transferred to the plaintiff. The defendant at her own request, was divorced in August 1931 and a document was drawn up and signed by the defendant which reads as follows:—

> "I, the undersigned Sa' amah binte Haji Abu Bakar request my husband named Tasmin bin Abdul Samad to divorce me. If and when he divorces me I will give back the land 5 acres grant 4727 to my husband Tasmin bin Abdul Samad. I will not do anything otherwise but I promise to transfer the land
>
> R. T. of Sa'amah
>
> I the said Tasmin bin Abdul Samad hereby agree to the request of my wife Sa'amah binti Haji Abu Bakar.
>
> Sd. Tasmin"